आयुक्त का कार्यालय, केंद्रीय जी. एस. टी. एवं केंद्रीय उत्पाद शुल्क ,अहमदाबाद – उत्तर, कस्टम हॉउस, प्रथम तल, नवरंगपुरा ,अहमदाबाद- 380009		OFFICE OF COMMISSIONER CENTRAL GST & CENTRAL EXCISE, AHMEDABAD- NORTH CUSTOM HOUSE, 1ST FLOOR, NAVRANGPURA, AHMEDABAD-380009
फ़ोन नंबर/ PHONE No.: 079-27544557	फैक्स/ FAX : 079-27544463	E-mail:- oaahmedabad2@gmail.com

F.No:- V.85/15-23/OA/2018
F.No:- STC/15-24/OA/2018

आदेश की तारीख़/Date of Order : - 10.03.2021
जारी करने की तारीख़/Date of Issue :- 10.03.2021

DIN No.:20210364WT0000444A4A

द्वारा पारित/Passed by:- एम. एल. मीणा / *M. L. Meena*
अपर आयुक्त / Additional *Commissioner*

मूल आदेश संख्या / Order-In-Original No. 56-57/ADC/2020-21/MLM

जिस व्यक्ति(यों) को यह प्रति भेजी जाती है, उसके/उनके निजी प्रयोग के लिए मुफ्त प्रदान की जाती है।
This copy is granted free of charge for private use of the person(s) to whom it is sent.

इस आदेश से असन्तुष्ट कोई भी व्यक्ति इस आदेश के विरूद्ध अपील, इसकी प्राप्ति से दो महिनों के अन्दर आयुक्त (अपील), केन्द्रीयजी.एस.टी., केन्द्रीयजी.एस.टी.भवन, अंबावाड़ी, अहमदावाद - 380015 को प्रारूप संख्या एसटी-4/ इ.ए-1 (E.A.-1)/(ST-4) में दाखिल कर सकता है। इस अपील पर रू. 5.00 (पांच रूपये) का न्यायालय शुल्क टिकट लगा होना चाहिए।

Any person deeming himself aggrieved by this order may appeal against this order in form (E.A.-1)/(ST-4) to the Commissioner(Appeals), GST Bhawan, Ambawadi, Ahmedabad-380015 within two months from the date of its communication. The appeal should bear a court fee stamp of Rs. 5.00 only.

इस आदेश के विरुद्ध अपील करने के लिए आयुक्त(अपील) के समक्ष नियमानुसार पूर्व जमा की धनराशि का प्रमाण देना आवश्यक है।
An appeal against this order shall lie before the Commissioner (Appeals) on giving proof of payment of pre-deposit as per rules .

उक्त अपील, अपीलकर्ता द्वारा प्रारूप संख्या संख्या एसटी-4/ इ.ए-1 (E.A.-1)/(ST-4) में दो प्रतियों में दाखिल की जानी चाहिए। उस पर केन्द्रीय उत्पाद शुल्क (अपील), नियमावली 2001 केनियम 3 के प्रावधानों के अनुसार हस्ताक्षर किए जाने चाहिए। उक्त अपील के साथ निम्नलिखित दस्तावेज संलग्न किए जाएं।
(1) उक्तअपीलकीप्रति।3
(2) निर्णय की प्रतियाँ अथवा जिस आदेश के विरूद्ध अपील की गई है, उनमें से कम से कम एक प्रमाणित प्रति हो, या दूसरे आदेश की प्रति जिस प ररू. 5.00 (पांच रूपये) का न्यायालय शुल्क़ टिकट लगा होना चाहिए।

The appeal should be filed in form (E.A.-1)/(ST-4) in duplicate. It should be signed by the appellant in accordance with the provisions of Rule 3 of Central Excise (Appeals) Rules, 2001. It should be accompanied with the following:
(1) Copy of accompanied Appeal.
(2) Copies of the decision or, one of which at least shall be certified copy, the order Appealed against OR the other order which must bear a court fee stamp of Rs.5.00.

विषय:- कारण बताओ सूचना/ Show Cause notices bearing Nos, STC/15-24/OA/2018 dated 31.12.2019 and V.85/15-23/OA/2018 dated 31.12.2019 issued to M/s. Transformers & Rectifiers (India) Ltd., S.No.431/P & 427/1/P, Sarkhej-Bavla Highway, Vill. Moraiya, Ta-Sanand, Dist.; Ahmedabad-382213.

BRIEF FACTS OF THE CASE:

M/s. Transformers & Rectifiers (India) Ltd., S.No.431/P & 427/1/P, Sarkhej-Bavla Highway, Vill. Moraiya, Ta-Sanand, Dist.; Ahmedabad-382213 (hereinafter referred to as "the said assessee") holding Central Excise Registration No. AACCT8243PXM003, engaged in the manufacture of Electrical Transformers falling under Chapter 85 of the schedule to the Central Excise Tariff Act, 1985. The said assessee is availing the facility of Cenvat credit of duty paid on inputs and Capital Goods. The said unit is engaged in providing taxable services covered under the services defined under the section 65 of the Finance Act, 1994 for which they obtained STC No. AACCT8243ST004.

2. During the course of audit of the records of the said assessee for the period from F.Y. 2012-13 to F.Y. 2016-17 by officers of CERA certain objections were raised and communicated vide LAR No.309/2017-18 dated 02.11.2017. It was observed by CERA, that:-

The said assessee received imported services in two installments from M/s. Fuji Electric Co., Ltd., Chiba, Japan vide Invoice No. CHIBA-141212-1 dated 12.12.2014 amounting to JPY 135000000 (Rs.7,05,78,000/-) and Invoice No. 53-1603311 dated 01.04.2016 amounting to JPY 40500000 (Rs. 2,38,09,950/-).

(a) They had made the payment of first installment of JPY 1,35,000,000 - Indian Rs.7,05,78,000/ to the foreign Service Provider on 11.2.2015. They had also made the payment of second installment of value of Services amounting of Rs. Rs.2,12,96,214/- out of total invoice value of Rs. 2,38,09,950/- (JPY 4,0500,000) to the foreign service provider on 23.08.2016. The balance amount of Rs.25,13,736 not paid by them to the foreign service provider though the invoice No. 53-1603311 dated 01.04.2016 was issued by the service provider i.e. M/s. Fuji Electric co., Ltd., Chiba, Japan.

3. From ST-3 Returns of the assessee, it was observed by audit that an amount of second installment of Rs.2,12,96,214, they paid service tax of Rs.19,35,825 (after adjusting R&D Cess of Rs.10,64,811) on 6.9.2016 and the same also found reflected in the ST-3 Return filed for the period April-September, 2016. However, on amount of first installment of Rs.7,05,78,000, the R&D Cess of Rs.35,28,900 and Service Tax payment of Rs.50,88,674 (ST Rs.49,40,460+3% education cess) not found reflected in any of the ST-3 Returns filed by them. On being asked by the auditors about the non-payment of Service tax on the first installment, the assessee produced the copy of cheque/challans towards payment of R&D Cess and Service Tax. Scrutiny of the challans produced by the assessee, it revealed that on Rs.7,05,78,000/- the assessee was liable to pay the R&D Cess of Rs.35,28,900 (@5%) and the assessee also paid the same through challan dated 11.2.2015. After adjusting the R&D Cess, the assessee was liable to pay the service tax of Rs.50,88,674 and the assessee also produced the Challan No. 00053471903201501769 to the audit team.

4. However, during the audit it was observed from the challan that the service tax of Rs.50,88,674 was actually paid by the other sister concern unit on 19.3.2015 (located in Changodar and having separate STC Code AACCT8243PST001) and not by the said unit who was actually liable to pay the service tax. Thus, the service tax of Rs.50,88,674/- was not paid by

the assessee and the assessee was liable to pay the service tax. This resulted in non-payment of service tax of Rs.50,88,674 along with applicable rate of interest.

(b) **Non-payment of service tax even though invoice received from Foreign Service provider:-** Rule 7 of Point of Taxation Rules, 2011, provides the determination of point of taxation in case of copyrights, etc. This Rule provides that in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider give rise to any payment consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof, or an invoice is issued by the provider of service, whichever is earlier.

5. It was also observed by the CERA audit that the assessee imported technology from M/s. Fuji Electric Japan and made payment of value of services in two installments. The assessee paid first installment of JPY 1,35,000,000 - Indian Rs.7,05,78,000 on 11.2.2015. The assessee made payment of Rs.2,12,96,214/-out of second installment of JPY 4,0500,000 (Indian Rs.2,38,09,950) as raised by the foreign service provider vide invoice no. 53-1603311 dated 1.4.2016, on 23.8.2016. The balance amount of Rs.25,13,736 of the value of invoice No. 53-1603311 dated 01.04.2016 not paid by the assessee to the foreign service provider though the invoice was issued by the service provider. Thus, service tax liability on Rs. 25,13,736 was not discharged by the assessee though as per Rule cited above, the point of taxation shall be the date of invoice in this case i.e. on invoice dated 1.4.2016, the service tax liability arose on 5.5.2016. However, the assesseee did not pay the service tax of Rs.3,77,060/- as detailed below:

Invoice No. 53-1603311 dtd. 1.4.2016			
	Amount in Japan yen	Exchange rate	Amount in Rs.
Technology import value	4275788	0.5879	2513735.76
Date of payment of value of service to provider of service	Not paid till date of audit		
Point of taxation	1.7.2016 (Rule 7 of POT Rules, 2011)		
Service Tax			**351923.00**
SBC Payable			**12568.68**
KKC Payable			**12568.68**
	Non-payment of service tax		**3,77,060.36**

6. The above non-payment of service tax of Rs. 3,77,060/-to be recovered along with applicable rate of interest and penalty in terms of Finance Act, 1994 and Rules made thereunder.

(c) **Non-payment of interest on belated payment of Service Tax.:-** As per Rule 7 of Point of Taxation Rules, 2011, provides the determination of point of taxation in case of copyrights, etc. This Rule provides that in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider give rise to any payment

consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof, or an invoice is issued by the provider of service, whichever is earlier.

7. During test check of records of assessee, it was observed by CERA audit that the assessee imported technology of JPY 4,0500,000 (Indian Rs.2,38,09,950) vide invoice no. 53-1603311 dated 1.4.2016 and the assessee made payment of value of Rs.2,12,96,214/- to the foreign service provider on 23.8.2016. In the instant case, as per the provisions cited above, the point of taxation shall be date of issue of invoice as issued by the service provider and service tax was required to be paid and by 5.5.2016 respectively. However, audit observed that the assessee had paid the Service Tax of Rs.19,35,825/- on the value of Rs. 2,12,96,214/- on 06.09.2016 and thus there was delay in payment of service tax on the second installment. On this belated payment of service tax, the assessee was liable to pay the interest of Rs.1,18,377/-. The details are as under:-

Total ST paid	Date of invoice	Point of Taxation	Tax paid on	Delay in day	Interest
1935825	1.4.2016	05-05-2016	06-09-2016	124	118377
Interest payable					1,18,377

8. Letter dated 29.09.2017 and 09.01.2018 was issued from F.No.AR-III/CERA-T&R/2015-16 by Superintendent of CGST & Central Excise, AR- III, Division-IV, Ahmedabad North vide which the said assessee was requested to furnish following information :-

1. *Provide the details of payment particulars of service Tax paid in respect of* imported first installment of technology service from M/s. Fuji Electric Co. Ltd., Chiba, Japan of JPY 1,35,000,000 - Indian Rs.7,05,78,000 vide invoice no. CHIBA-141212-1 dated 12.12.2014 and imported second installment of technology service from M/s. Fuji Electric Co. Ltd., Chiba, Japan of JPY 4,0500,000 (Indian Rs.2,38,09,950) vide invoice no. 53-1603311 dated 01.04.2016

2. *Provide copy of half yearly ST-3 returns of relevant period.*

3. *Provide copy of* invoice no. CHIBA-141212-1 dated 12.12.2014 of JPY 1,35,000,000 - Indian Rs.7,05,78,000 and invoice no. 53-1603311 dated 01.04.2016 of JPY 4,0500,000 (Indian Rs.2,38,09,950 of M/s. Fuji Electric Co. Ltd., Chiba, Japan

4. *Provide copy of service Tax challan No. 00053471903201501769 for Rs. 50,88,674/-*

9. In reply, the said claimant vide letter dated 31.01.2018 submitted that:-

(i) Copy of invoice no. CHIBA-141212-1 dated 12.12.2014 of JPY 1,35,000,000 - Indian Rs.7,05,78,000 and invoice no. 53-1603311 dated 01.04.2016 of JPY 4,0500,000 (Indian Rs.2,38,09,950 of M/s. Fuji Electric Co. Ltd., Chiba, Japan

(ii) Copy of Service Tax challan No. 00053471903201501769 for Rs. 50,88,674/-.

(iii) Copy of half yearly ST-3 return for period from October' 2014 to March' 2015 and April'2016 to September' 2016.

10. For further inquiry, summons dated 07.02.2018, was issued to the assessee. In response to the said summons, Shri Harshad Raiya, Manager of the said assessee remained present before the Superintendent, Central GST & Central Excise AR-III, Div-IV, Ahmedabad North on 19.02.2018 and on same day, the statement of Shri Harshad Raiya was recorded under section 14 of the Central Excise Act, 1944 made applicable to Service Tax Matters vide Section 83 of the Finance Act, 1994, wherein he stated that he is looking after all the affairs relating to accounting and finance of the said assessee. His depositions in respect of the relevant para's of the said LAR No. 309/17-18 dated 02.11.2018 is as follows:-

- *Regarding* non– payment of Service Tax on import of service- (Rs. 50,88,674/- + Rs. 3,77,060, *it was submitted that their other unit i.e. Changodar Unit having STC Code AACCT8243PST001 had discharged the service tax liability of Rs. 50,88,674/- vide challan No. 00053471903201501769 (i.e. 01769 dated 19.03.2015) in respect of service imported vide invoice no. CHIBA-141212-1 dated 12.12.2014. Also submitted copy of Challan No. 00053471903201501769 and copies of invoice no.* CHIBA-141212-1 dated 12.12.2014 of M/s. Fuji Electric Japan, Invoice No. 53-1603311 dated 01.04.2016 of M/s. Fuji Electric Japan.

- *On being asked regarding* non– payment of Service Tax on import of service- of Rs. 3,77,060, it was submitted that *the service tax liability in respect of service imported vide invoice* No. 53-1603311 dated 01.04.2016 of M/s. Fuji Electric Japan, S.T. including cess @9%=0.5%+0.5% is Rs. 23,80,995/- and R&D cess @ 5% is Rs. 11,90,498/- on the value of Rs. 2,38,09,950/-. He submitted that they have made payment to party only of Rs. 2,1,2,96,214/- on 23.08.2016 and they have already paid Service Tax of Rs. 19,35,825/- vide Challan No. 50785 dated 06.09.2016 and R&D Cess of Rs. 10,64,811/- on 16.08.2016.

- *Further on being asked about the non-payment of interest on belated payment of service tax of Rs. 19,35,825/-, it was submitted that there is no delayed payment of Service tax and hence interest was not leviable*

11. As per notification No. 30/2012- Service tax dated 20.06.2012

'the Central Government hereby notifies the following taxable services and the extent of service tax payable thereon by the person liable to pay service tax for the purposes of the said sub-section, namely:-

I. The taxable services,-

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(B) provided or agreed to be provided by any person which is located in a non-taxable territory and received by any person located in the taxable territory;

(II) The extent of service tax payable thereon by the person who provides the service and the person who receives the service for the taxable services specified in (I) shall be as specified in the following Table, namely:-

Sl. No.	Description of a service	Percentage of service tax payable by the	Percentage of service tax payable by the

		person providing service	person receiving the service
10	In respect of any taxable services provided or agreed to be provided by any person who is located in a non-taxable territory and received by any person located in the taxable territory	**NIL**	**100%**

12. (i)As per sub-clause (a) of Clause (44) of Section 65 B of the Finance Act, 1994 "**service**" means any activity carried out by a person for another for consideration, and includes a declared service. In the instant case the assessee had imported technology from M/s Fuji Electric, Japan which is a service not comprising of services under section 66 D of Finance Act, 1994.

*(ii) As per Point of Taxation Rules, 2011 "Determination of point of taxation in case of specified services or persons.- Notwithstanding anything contained in rules 3, 4 or 8, the point of taxation in respect of the persons required to pay tax as recipients of service under the rules made in this regard in respect of services notified under sub-section (2) of section 68 of the Act, shall be the date on which payment is made: Provided that where the payment is not made within a period of three months of the date of invoice, the point of taxation shall be the date immediately following the said period of three months: Provided further that in case of "associated enterprises", where the person providing the service is located outside India, the point of taxation shall be the date of debit in the books of account of the person receiving the service or date of making the payment whichever is earlier. "**Provided also that where there is change in the liability or extent of liability of a person required to pay tax as recipient of service notified under sub-section (2) of section 68 of the Act, in case service has been provided and the invoice issued before the date of such change, but payment has not been made as on such date, the point of taxation shall be the date of issuance of invoice". Inserted vide Notification 21/2016-Service Tax.***

"Provided also that in case of services provided by the Government or local authority to any business entity, the point of taxation shall be the earlier of the dates on which, - (a) any payment, part or full, in respect of such service becomes due, as specified in the invoice, bill, challan or any other document issued by the Government or local authority demanding such payment; or (b) payment for such services is made." Inserted vide notification 24/2016-Service Tax dated 13 April 2016".

13. Thus, the service tax of Rs.5465734 /- as discussed above is required to be recovered from the said assessee under Section 73 of Finance Act, 1994 along with the applicable interest under section 75 of the Finance Act, 1994 amounting to Rs. 1,18,377/- on delayed payment of Service Tax.

14. As per Provision of Section 68 (2) of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person liable to pay service tax at the rate prescribed in Section 66 to Central Government by the 5th of the month / quarter immediately following the calendar month / quarter in which the payments are received towards the value of taxable services (except for the month of March which is required to be paid on 31st March).

15. According to Section 70 of the Finance Act, 1994 (as amended from time to time), every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

16. The said assessee has not disclosed full and correct information about value of the services provided by them in the half yearly ST-3 Returns filed during the period October'2014 to March'2015 and April'2016 to September'2016 and failed to self-assess the correct taxable value for the services provided by him and thereby contravening the Provisions of the Section 70 of the Finance Act, 1994.

17. According to Section 73 of the Finance Act, 1994 (as amended from time to time, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of —

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, Central Excise Officer may, within Five year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

18. It appeared that, there is deliberate withholding of essential information from the department about service provided and value realized by the said assessee. It appeared that all these material information have been concealed from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of Section 73(1) of Finance Act, 1994 to demand the service tax short paid.

19. According to Section 75 of the Finance Act, 1994(as amended from time to time), every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] for the period by which such crediting of the tax or any part thereof is delayed.

20. The said assessee has contravened the provisions of Section 67 of the Finance Act, 1994 in as much as, they have failed to determine the correct value of taxable services provided by them; Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as, they failed to determine and pay the correct amount of service tax and hence is liable to pay the interest as applicable.

21. It appeared that the said assessee has contravened the provisions of Section 68(2) of the said Act in as much as they have failed to pay service tax at the rate specified under Section 66 B of the said Act and thereby rendered themselves liable for penalty under section 78 of the said act.

22. All the above acts of contravention on part of the said assessee seem to have been committed willfully with intent to evade payment of service tax rendering them liable for penalty under Section 78 of the Service Tax Act.

Also, since the said assessee is failed to comply with the Section 70 of the Finance Act, 1994 and hence making them liable for penalty under Section 77 of the Finance Act, 1994.

23. The government from the very beginning placed full trust on the service providers, so far as service tax concerned and accordingly measures like self assessment etc., based on mutual trust and confidence are in place. Further, a taxable service provider is required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of service tax. All these operates on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened as there is a breach of trust placed on the service provider, no matter how innocently. The deliberate efforts by not paying the correct amount of service tax is utter disregard to the requirements of law and breach of trust deposed on them, such outright act in defiance of law appeared to have rendered them liable for stringent penal action as per the provisions of the Section 78 of the Finance Act, 1994 for suppression on concealment with intent to evade payment of service tax.

24. Therefore, M/s Transformer & Rectifiers (India) Limited, Survey No.431/P & 427/1/P , Sarkhej- Bavla Highway, Moraiya- Sanand, Ahmedabad was called up on to Show Cause to the Additional Commissioner of Central GST & Central Excise, Ahmedabad North, vide show cause notice F.No.STC/15-24/OA/2018 dated 31.12.2019 as to why :-

(i) the Service Tax worked out to Rs.54,65,734/- (Rupees Fifty Four Lakhs Sixty Five Thousand Seven Hundred and Thirty Four only) covering the period from 2014-2015 and 2016-017 should not be demanded and recovered from them under proviso to Section 73 (1) of the Finance Act, 1994 read with Section 68(2) of the Finance Act, 1994 and the Notification No.30/2012-ST dated 20.06.2012 by invoking extended period of five years;

(ii) Interest as applicable on the amount of service tax liability should not be recovered from them for the delay in making the payment of service tax, under Section 75 of the Finance Act, 1994;

(iii) Interest of Rs. 1,18,377/- as applicable on delayed payment of Service Tax amounting of Rs. 19,35,825/- should not be recovered from them, under Section 75 of the Finance Act, 1994

(iv) Penalty should not be imposed upon the said assessee under Section 76 of the Finance Act, 1994, for the failure to the make the payment of Service Tax payable by them within the stipulated time;

(v) Penalty should not be imposed upon the said assessee under Section 77 of the Finance Act, 1994, as amended, for contravention of the provisions of section 70 of the Finance Act, 1994.

(vi) Penalty should not be imposed upon them under Section 78 of the Finance Act, 1994 for suppressing the value of taxable services provided by the said assessee before the department with intent to evade payment of Service Tax.

WRONG AVAILMENT OF CENVAT CREDIT ON SERVICE TAX PAID BY OTHER UNIT

25. Further, during the course of CERA audit which was conducted for the period from period 2012-13 to 2016-17 by the officers of Comptroller & Auditor General, Ahmedabad, it was also observed in Para-01 and Para-05 of the LAR No. 309/2017-18 dated 02.11.2017, that the said assessee had wrongly availed Cenvat credit Rs. 5088674/-on Service Tax paid vide Challan No. 00053471903201501769 by other unit i.e. M/s. Transformers & Rectifiers (India) Ltd., Survey No. 344-350,, Sarkhej-Bavla Highway, Opp. PWD Store, NH No. 08, Village Changodar, Ahmedabad-382213 having Service Tax Registration No.AACCT8243PST003 on import of service under Intellectual Property Rights Service other than Copyright' category and also availed Cenvat Credit of Rs. 1,22,006/- (plus E.Cess and SHE Cess total Rs.127540/-) on ineligible input service viz. International Trade and Exhibitions India Pvt.Ltd and Academy of Human Resources Development.

26. The said assessee was requested by Range Superintendent AR-III vide letter dtd. 29.09.2017 & 09.01.2018, to provide the challan/invoices of wrongly availed Cenvat Credit Rs. 5088674/- on Service Tax paid by other unit on import service under Intellectual Property Rights Service other than Copyright' category and also Cenvat Credit availed on ineligible input service of Rs. 1,22,006/- (plus E Cess and SHE Cess, total Rs.127540/-). The said assessee vide their letter dated 31.01.2018 had provided the said documents as detailed below:-

(i) Copy of Challan No. 00053471**903201501769** amount of Rs. 51,21,297/- (S.T. Rs. 50,88,674/- including Education Cess) paid by M/s. Transformer and rectifier (India) Ltd., 344-350, Changodar Ind. Estate, sarkhej–Bavla Highway, Ahmedabad-Gujarat (Assessee Code AACCT8243PST001).

(ii) Copies of invoices of ineligible input credit.

Invoice No. and date	Name of Service provider	Total Cenvat credit availed
201606000039 dtd. 30.6.16	International Trade and Exhibitions India Pvt. Ltd.	82274
201606000002 dtd. 6.6.2016	International Trade and Exhibitions India Pvt. Ltd.	750
FIR/21603095 dtd. 30.5.2016	International Trade and Exhibitions India Pvt. Ltd.	38316
1080 dtd. 20.9.2016	Academy of Human Resources Development	6200
	Total	127540/-

27. A statement of Shri Harshad Raiya, Manager of M/s. Transformers & Rectifiers (India) Ltd., in this regard was recorded under section 14 of the Central Excise Act, 1944, wherein he stated that he is looking after all the affairs relating to accounting and finance of the said assessee. His depositions in respect of the relevant paras of the said LAR No. 309/17-18 dated 02.11.2018 is as follows:-

- *Regarding wrongly availed of CENVAT credit of Rs. 50,88,674/-, it was submitted that company has claimed the Cenvat Credit of Rs. 50,88,674/- in the month of October-2015 in ER-1 on the basis of service tax paid by their other unit at Changodar vide Challan No. 00053471903201501769 and same has also been properly reflected in their ST-3 return for the period from October'2015 to March'2016.*

- *On being asked regarding wrongly availed input service credit of Rs. 1,22,006/-(+E.Cess & SHE Cess total Rs.127540/-) it was submitted that they availed input service credit in the month of May'2016, July' 2016 & October'2016 on the following invoices:-*

Invoice No. and date	Name of Service provider	Cenvat Credit availed (Rs.)
201606000039 dtd. 30.6.16	International Trade and Exhibitions India Pvt. Ltd.	82274
201606000002 dtd. 6.6.2016	International Trade and Exhibitions India Pvt. Ltd.	750
FIP/21603095 dtd. 30.5.2016	International Trade and Exhibitions India Pvt. Ltd.	38316
1080 dtd. 20.9.2016	Academy of Human Resources Development	6200

28. Rule 9 (1) of Cenvat Rules, 2004 provides the eligible documents for the purpose of taking Cenvat credit, which reads as under-

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(I) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(II) inputs or capital goods as such;

(ii) an importer;

(iii) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(iv) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(b) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

(c) Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(d) a bill of entry; or

(e) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(f) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(g) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of September, 2004; or

(h) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

***Provided that** the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;*

29. The facts narrated above, the challan no.00053471**903201501769** on which credit availed by the assessee on Service Tax paid by the other unit i.e. M/s. Transformers & Rectifiers (India) Ltd., Survey No. 344-350, Sarkhej-Bavla Highway, Opp. PWD Store, NH No. 08, Village Changodar, Ahmedabad-382213 is not admissible to them under Rule 9 of Cenvat Credit Rules, 2004.Thus, the assessee had not discharged its Tax liability. Availing of Cenvat credit without payment of service tax was irregular in view of service tax provisions. Hence, Cenvat Credit of Rs. 50,88,674/- taken on the strength of the said challan is not admissible to them and required to be recovered along with interest under Rule 14 of Cenvat Credit Rules 2004 read with Section 11A and 11AA of the Central Excise Act, 1944. The said assessee has also rendered themselves liable for penalty under Rule 15 of the Cenvat Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

30. Therefore, it appeared that the assessee have contravened the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004. The assessee has nowhere intimated the department that they are availing of the credit of such inadmissible services. Rule 9(5) of the Cenvat Credit Rules, 2004 stipulates that the burden of proof regarding the admissibility of the Cenvat Credit shall lie upon the manufacturer or provider of output service taking such credit. In the instant case it is observed that the assessee have failed to discharge such obligation cast upon them and as such it appeared that the assessee have indulged in the above said contravention with intent to evade payment of duty.

31. With effect from 01.04.2011, the term "Input Service" has been re-defined under Rule 2 (l) of the said Credit Rule and the same is reproduced as under:

(l) "Input service" means any service, -

(i) Used by a provider of taxable service for providing an output service, or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(A) Service portion in the execution of a works contract and construction services including services listed in clause (b) of Section 66E of the finance Act (hereinafter referred as specified services) insofar as they are used for –

(a) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(b) Laying of foundation or making of structures for support of capital goods except for the provision of one or more of the specified services; or

(B) Services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle, which is not a capital goods; or

(BA) Services to general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods except when used by –

(a) A manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(b) An insurance company in respect of a motor vehicle insured or reinsured by such person; or

Such as those provided in relation to outdoor catering, *beauty treatment, health services, cosmetic and plastic surgery, membership of a club,* **health and fitness centre**, *life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home*

travel concession, when such services are used primarily for personal use or consumption of any employee;

32. M/s. Transformers & Rectifiers (India) Ltd., is not eligible to avail Cenvat Credit on Exhibition Services and Health & Fitness Service because such services were not used directly or indirectly in or in relation to manufacture of final products. These services do not qualify as eligible input services as statutorily defined under Rule 2(l) of the CCR, 2004 for the purpose of availing CENVAT credit by virtue of Rule 3 of the CCR, 2004. It appeared that such ineligible CENVAT credit availed& utilized by M/s. Transformers & Rectifiers (India) Ltd. is therefore required to be recovered along with interest from them under Rule 14 of the CCR, 2004 read with the provisions of Section 11A and Section 11 AA of the Central Excise Act, 1944.

33. In view of above facts, it appeared that Input credit of Service Tax amounting to Rs. 1,27,540/- for the period FY 2016-17 has availed by M/s. Transformers & Rectifiers (India) Ltd. was not legally available to them& this same they availed and utilized is in violation of the stipulation under Rule 2(l) of the CCR, 2004 where input service is defined as service availed up to the place of removal and in complete disregard to the definition of 'place of removal' for manufactured goods provided under Section 4(3)(c)(i) of the Central Excise Act, 1944. By way of such transgression with intention to utilized undue benefit of CENVAT credit it appears that M/s. Transformers & Rectifiers (India) Ltd has contravened the provisions of Rule 3 of the CCR, 2004 rendering them liable to penalty under Rule 15(2) of the CCR, 2004.

34. M/s. Transformers & Rectifiers (India) Ltd. is a well-known established business firm and are fully aware about the provisions of Central Excise Act,1944 and rules made there under, and they are strictly bound to follow the mandatory and regulatory requirements prescribed under the said rules. It is well established law that the burden for admissibility of credit shall always lie upon the person taking such credit. M/s. Transformers & Rectifiers (India) Ltd. has resorted such modus operandi with intent to avoid the payment of tax. Thus, it is clear that M/s. Transformers & Rectifiers (India) Ltd. has purposefully contravened the provisions of CCR, 2004 as elaborately discussed hereinabove and rendered them liable for penalty under 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

35. Under the self-assessment procedure there is no requirement to submit the documents such as sales invoice or purchase invoice with ER-1/ER-3 filed by the registered manufacturer or service provider who shall have to report only the arithmetical data of payment of duty, CENVAT Credit of duty availed/utilized and quantity of excisable goods manufactured and cleared during the month in ER-1/ER-3. Further, it is fact that from any point of time M/s. Transformers & Rectifiers (India) Ltd. has nowhere intimated or sought for any clarification or it was brought to notice to the department about admissibility of credit of input Service Tax in respect of credit taken by the assessee. Thus, it appeared that the material facts of admissibility and availing such credit are deliberately suppressed by them with intent to avail and utilize the inadmissible credit. Had the department not conducted audit the facts of availing such credit

would have been remained un-noticed. In the event of their deliberate failure to bring the notice to the department it is clear case of suppression of facts with malafide intention and thus the extended period is invokable in this case to disallow and recover such inadmissible credit which has been availed and utilized by them towards the payment of duty of excise on their final products.

36. This act of commission clearly establishes their fraudulent mindset and the act of wrong availment/utilization of credit resulted into gross infringement of Central Excise Rules, 2002 and Central Excise Act,1944 which rendered them liable for penal action. In the case of Commissioner of Customs V/s. Candid Enterprises [2001 (130) E.L.T. 404 (S.C.)], the Apex Court observed that Section 17 of the Limitation Act,1963 has embodied cardinal principle that fraud nullifies everything. In this case the ratio of Commissioner of Customs V/s. Candid Enterprises [2001 (130) E.L.T. 404 (S.C.)] and Commissioner V/s. Aafloat Textiles Pvt Ltd [2009 (235) ELT 587 (S.C.)] is applicable.

37. In view of the above, another Show Cause Notice No.V.85/15-23/OA/2018 dated 31.12.2019 was issued to M/s. Transformer & Rectifiers India Ltd., Survey No. 431/P & 427/1/P, Sarkhej-Bavla Highway, Vill. Moraiya, Ta-Sanand, Dist.;Ahmedabad-382213 to show cause to the Additional/Joint Commissioner of Central GST & Central Excise, Ahmedabad North as to why:

i. CENVAT credit of Service Tax amounting to Rs.50,88,674 /- [CENVAT+ Ed.Cess. Rs.+ & SHE Cess] availed wrongly and should not be recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944;

ii. CENVAT credit of Service Tax amounting to Rs. 1,27,540 /- [CENVAT+ Ed.Cess. Rs.+ & SHE Cess] availed on ineligible input services should not be disallowed and recovered from them under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944;

iii. Interest at the appropriate rates on the amount of CENVAT credit demanded and confirmed in terms of (i) & (ii) above should not be charged and recovered from them under Section 14 of the Cenvat Credit Rules, 2004 read with section 11AA of the Central Excise Act, 1944 and;

iv. Penalty under the provisions of Rule 15(2) of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944 should not be imposed on them for contravention of the provisions of the Central Excise Act, 1944 and or the rules made thereunder.

DEFENSE REPLY IN THE CASE OF NON-PAYMENT OF SERVICE TAX

38. In the case of non-payment of Service Tax to the tune of Rs.54,65,734/- , the assessee stated that the show cause notice is not sustainable both on facts and provisions and therefore, the same is liable to be dropped both on merits, as well as on limitation.

39. M/s.Transformers & Rectiafiers (I) Ltd, Vill: Moraiya, Tal.Sanand Dist: Ahmedabad stated that they entered into Technology Licence Agreement dated 12.12.2014 with M/s.Fuji Electric Company Ltd, Japan. This agreement was for develop, own and acquire, Valuable Technology Technical and Commercial Know-how and Expertise in relation to Technology and Know-how and Training and Technical Assistance, in relation to High Rating Transformers and Special Category Transformers. From this Agreement, it will be clear that the Agreement is with Moaraiya Unit of their company.

40. The assessee further stated that as per Terms of the Agreement, they have to pay consideration in foreign currency in (JPY) to M/s.Fuji Electric Company Ltd, Japan. In February-2015, they have paid JPY 13,50,00,000 to FUJI against the Agreement of Technical Know How. They have paid Service Tax as well as R& D Cess on this payment.

41. They stated that the payment of Service Tax was made from "Changodar" Unit, instead of "Moraiya" unit of Transformers & Rectifiers (I) Ltd. The said amount of payment of Service Tax made from Changodar Unit was transferred to Moraiya unit through Input Service Distributor procedure as they had ISD Registration in Changodar Unit. The payment of Service Tax related to the Services availed by Moraiya Unit only, as per Agreement and the said payment was also transferred to Moraiya Unit by Changodar Unit, as per rule 7 of Cenvat Credit Rules, 2004. Therefore, there is no irregularity in discharging liability of payment of Service Tax as well as availment of Cenvat Credit by Moraiya Unit.

42 The assessee stated that they had imported services related to Royalty and Licence Fees in two instalments from M/s.Fuji Electric Co. Ltd, Chiba, Japan vide Invoice No.CHIBA-141212-1 dated 12.12.2014 for an amount of JPY 135000000 (Rs.7,05,78,000.00. On this payment of Rs.7,05,78,000.00 (R&D Cess of Rs.35,28,900.00), Service Tax payment of Rs.50,88,674/- (ST Rs.49,40,460/-+3% Education Cess) is payable. On Rs.7,05,78,000.00, they were also liable to pay R&D Cess of Rs.35,28,900.00, @ 5% and they had also paid the same through challan dated 11.12.2015. This Challan was produced before Audit Party. After adjusting R&D Cess, there was a liability to pay Service Tax of Rs.50,88,678.00 for the payment of Value of Rs.7,05,78,000.00 for which they had produced a Service Tax payment challan No.00053471903201501769 dated 19.03.2015, before the Audit party. This payment of Service Tax was made by their unit located at Changodar and having separate STC No.AACCT8243PST001. They are also registered as Input Service Distributor. All these facts are recorded in the SCN itself. Since the liability of payment of Service Tax has already been discharged by their Company, there can not be any demand of Service tax of Rs.50,88,674.00

43. They stated that normally, in companies who have more than one unit, such important Contracts one unit deals with the Service Providers and make payment to them. It is not in dispute that Service Tax of Rs.50,88,674.00 has not been paid on this Foreign Payment under Reverse Charge. SCN admits that their other unit located in Changodar and having separate STC No.AACCT8243PST001 made Service Tax payment. Since this payment has been made by

Changodar Unit, under their registration, they have also reported this payment in their ST-3 Return. Being an ISD, Changodar Unit, distributed the Cenvat Credit to them for which SCN was issued. The availment of Cenvat Credit is also recorded in Cenvat Credit Registers and therefore, all disclosures are made to the Department. Therefore, they stated that the demand of Service Tax is not sustainable as Service Tax has already been paid.

44. The assessee stated that the allegation is that they were required to make payment to M/s.Fuji Electric, Japan, against import of Technology, in two installments. They had paid the first installment of JPY 1,35,000,000 (Rs.7,05,78,000.00) on 11.2.2015. They further stated that this liability pertains to Invoice No.53-1603311 dated 01.04.2016 of M/s.Fuji Electric, Japan. The value of Invoice was Rs.2,38,09,950.00. Against this, they have made Advance Payment of Rs.2,12,96,214.00 only to Service Provider, on 23.08.2016 and have also made payment of Service Tax of Rs.19,35,825.00 vide Challan No.50785 dated 06.09.2016 and R&D Cess of Rs.10,64,811.00 on 16.08.2016. They had made Advance Payment to M/s.Fuji Electric, Japan, against their Proforma Invoice. This being the Advance Payment, there was no delay in making payment of Service Tax.

45. The assessee stated that the allegation is that the balance amount of Rs.25,13,736.00 of the Value of Invoice No.53-1603311 dated 01.04.2016 is yet to be paid to Foreign Service Provider. The Service tax liability on Rs.25,13,736.00 worked out to Rs.3,77,060.00 which is yet to be discharged. They submitted that this is a Proforma Invoice and they had made part payment against the said invoice. As per Rule 7 of Point of Taxation Rules, 2011, the Point of Taxation, in respect of the Persons, required to pay Tax, as Recipients of Service, under the Rules made in this regard, in respect of services notified under Sub-Section (2) of Section 68 of the Finance Act, 1994 shall be the date on which payment is made. Provided that, where the payment is not made within a period of three months of the date of invoice, the Point of Taxation shall be determined the date immediately following the said period of three months. These provisions apply only when the Invoice is issued after rendition of Services and not for Advance Payment against Proforma Invoice. There is, therefore, no liability of payment of Service tax of Rs.3,77,060.00 on balance payment of Rs.25,13,736.300 which is not payable.

46. They stated that the allegation is that Point of Taxation shall be the date of Invoice of Service Provider and Service Tax was required to be paid by 05.05.2016 and thus, there was delay in making payment of Service Tax on the second installment. They stated that the payment made to Service Provider, is an Advance Payment and therefore, there is no delay in making payment of Service Tax. The Point of Taxation Rules apply only when Final Invoice is issued by the Service Provider and not for Advance Payments. They stated that Advance Payments are only provisional payments, made to Service Provider and Proforma Invoices issued by Service Providers for receiving these Advance Payments can not be taken into account for computed the time limit as per Point of Taxation Provisions. In view of this they submitted that there is no delay in making payment to Service Provider and consequently, they are not liable to make payment of interest amounting to Rs.1,18,377/-..

47. The assessee stated that the SCN is barred by limitation as the SCN has been issued on 31.12.2019 covering the period from 2014-15 and 2016-17. They stated that there is no ingredients such as fraud, misstatement and suppression of facts etc which warrant invoking longer period of limitation. All these facts were within the knowledge of the Department and it can not be alleged that they have suppressed the facts, with an intent to evade payment of duty. They referred to the case of Nizam Sugar Factory Vs CCE reported in (2006(197)ELT 465 (SCN). They also relied CBEC Circular No.5/92-CX dated 13.10.1992 has clarified that mere non-declaration is not sufficient for invoking longer period of limitation. Therefore, they stated that the SCN is liable to be dropped.

48. The assessee has stated that the SCN proposes imposition of penalty under the provisions of Section 76, 77 and 78 of the Finance Act, 1994. They stated that penalty can not be imposed under both Sections 76 and 78 of Finance Act, 1994. They relied the case of Checkmate Industries Services Vs Commissioner of C.Ex, Pune-III reported in (2016 (44) STR 290 (Tri-Mumbai).

49. They also stated that penalty under Section 77 of the Finance Act, 1994 also can not be imposed as none of the ingredients contained therein are present in the case under dispute.

50. They also relied the order passed by the Hon'ble Supreme Court in the case of Continental Foundations Jt.Venture, Vs Commissioner of C.Ex, Chandigarh-1 reported in (2007 (216) ELT 177 (SC) has held that expression, "suppression", used in Proviso to Section 11A of Central Excise Act, 1944 to be construed strictly – mere omission to give correct information is not suppression of facts unless it was deliberate to stop the payment – suppression means failure to disclose full information with intent to evade payment of duty – An incorrect statement can not be equated with a wilful mis-statement – there can not be suppression or mis-statement of fact, which is not wilful and yet constitute a permissible ground for purpose of proviso to Section 11A ibid - mis-statement of fact must be wilful. They also referred to the following case laws-

i) Lanxess ABS Ltd Vs Commissioner of C.Ex, Vadodara reported in (2011 (22) STR 587 (Tri-Ahmd).

ii) CCE & C, Aurangabad Vs Wockhardt Ltd reported in 2009-TIOL-1308-CESTAT-Mum

iii) Cosmic Dye Chemical Vs CCE, Bombay reported in (2002-TIOL-236-SC-LB)

iv) Padmini Products Vs CCE reported in (1989 (43) ELT 195 (SC)

v) Gopal Zarda Udyog Vs CCE reported in (2005 (188) ELT 251 (SC).

51. The assessee stated that in view of the foregoing penalty is not imposable and the interest in terms of Section 75 of the Finance Act, 1994 is also not chargeable. Therefore, they requested to drop the Show Cause Notice and to grant them an opportunity for personal hearing.

52. The assessee submitted an additional submission received in this office on 12.06.2020 wherein they reiterated their earlier submission and stated that there is no liability on them, no

interest and penalty is imposable on them when Service Tax stands paid and disclosed in the statutorily prescribed Returns. They also submitted copies of case laws discussed above.

DEFENCE REPLY ON WRONG AVAILMENT OF CENVAT CREDIT

53. In the case of wrong availment of Cenvat Credit to the tune of Rs.52,16,214/- in relation to Show Cause Notice No.V.85/15-23/OA/2018 dated 31.12.2019, M/s.Transformers & Rectifiers (I) Ltd, vide their letter dated 03.06.2020 stated that –

54. Their company is incorporated within the meaning of the Companies Act, 1956, in the name and style of Transformers & Rectifiers (I) Ltd. They hold Central Excise Registration No.AAACCT8243PXM003 and are engaged in the manufacture of Electrical Transformers, falling under Chapter 85 of the First Schedule to the Central Excise Tariff Act, 1985.

55. The assessee stated that during the course of CERA Audit of their unit at Moraiya, Tal.Sanand, Dist-Ahmedabad, having Service Tax Registration No.AACCT8243PST004, which was conducted for the period from 2012-13 to 2016-17 by the officers of CERA, Ahmedabad. It was observed that in para 01 and para 05 of the LAR No.309/2017-18 dated 02.11.2017 that they had availed Cenvat Credit of Rs.50,88,674.00 on Service Tax paid vide challan No.00053471903201501769 dated 19.03.2015 by other Unit i.e. M/s.Transformers & Rectifiers (I) Ltd, Survey No.344-350, Sarkhej-Bavla Highway, OPP: PWD Store, NH No.08, Village : Changodar, Ahmedabad having Service Tax Registration No.AACCT8243PST003 on import of Service under Intellectual Property Rights Service other than Copyright category and also availed Cenvat Credit of Rs.1,22,006.00 on other Inputs. They stated that they had availed this Cenvat Credit of Rs.50,88,674.00 in the month of October 2015 and the same has been properly reflected in ST-3 Return for the period, October 2015 to March 2016.

56. They stated that the other ineligible services on which they had availed Cenvat Credit of Service tax of Rs.1,22,006.00 in the month of May, 2016, July, 2016 and October 2016 as averred in SCN are on Invoices dated 30.06.2016, 6.6.2016 and 30.05.2016 of International Trade and Exhibitions India Pvt.Ltd (Rs.1,15,806/- and Invoice dated 20.09.2016 of Academy of Human Resources Development Rs.6200/-.

57. The assessee stated that the Challan No.00053471903201501769 dated 19.03.2015 on which Cenvat Credit was availed by them on Service Tax paid by the other Unit i.e. M/s.Transformers & Rectifiers (I) Ltd, Survey No.344-350, Sarkhej-Bavla Highway, Opp: PWD Store, NH No.08, Village: Changodar, Ahmedabad is not admissible to them under Rule 9 of Cenvat Credit Rules, 2004. They stated that the SCN is not sustainable both on merits and time bar and therefore, liable to be dropped both on merits as well as on limitation.

58. The assessee stated that M/s.Transformers & Rectifiers (I) Ltd, Village: Moraiya, Taluka: Sanand, Dist-Ahmedabad, entered into Technology Licence Agreement dated 12.12.2014, with M/s.Fuji Electric Company Ltd, Japan. This Agreement is for Develop, own and acquire,

Valuable technology technical and commercial know-how and expertise in relation to Technology and know-how and Traaining Technical Assistance in relation to High Rating Transformers and special category Transformers. From this Agreement, it will be clear that the Agreement is with Moraiya Unit of their company. As per Terms of the Agreement, they have to pay consideration in foreign currency in (JPY) to M/s.Fuji Electric Company Ltd, Japan. In February 2015 they have paid JPY 135000000 to FUJI against the Agreement of Technical Know How. They have paid Service Tax as well as R&D Cess on this payment.

59. The assessee stated that the payment of Service Tax was made from Changodar Unit, instead of Moraiya Unit of Transformers & Rectifiers (I) Ltd. The said amount of payment of Service Tax, made from Changodar Unit was transferred to Moraiya Unit through Input Service Distributor Procedure as they have ISD registration in Changodar unit. The payment of Service Tax related to the Services availed by Moraiya Unit only as per Agreement and the said payment was also transferred to Moraiya Unit by Changodar Unit as per Rule 7 of Cenvat Credit Rules, 2004. In view of this, there is no irregularity in discharging liability of payment of Service tax as well as availment of Cenvat Credit by Moraiya Unit.

60. The assessee has stated that the Changodar unit is registered as Input Service Distributor and based on the said Registration, they have paid Service Tax and distributed the Cenvat Credit of Rs.50,88,674.00 to them. They submitted that as per Rule 7 of Cenvat Credit Rules, 2004, the Input Service Distributor shall distribute the Cenvat Credit, in respect of the Service tax paid on the input service to their Manufacturing Units or Unit, providing Output Service or an Outsourced Manufacturing Units, as defined in Explanation 4, subject to the conditions specified in the said Rule. They enclosed copy of Central Excise Registration Certificate; Service Tax Registration Certificate and ISD Registration Certificate as collectively obtained by Changodar Unit.

61. They stated that they had availed the Cenvat Credit and recorded the said availment in their Cenvat Credit Registers and also reflected the said availment in their monthly Returns. Their Changodar Unit has also reported the Service Tax payment, in their ST-3 Returns and Department has no issue on this account. Therefore, they stated that there is no infirmity in the availment of Cenvat Credit of service Tax b y them as the Services are consumed in their Unit. Apart from this, the Intellectual Property Services viz. Royalty and Licence Fees, have nexus without Manufacturing Operations and therefore, the Cenvat Credit of Service Tax is admissible. In other words, when the fact of making payment of Service Tax by their Changodar Unit, is clearly emerging from the Show Cause Notice itself. Changodar Unit has not availed the said Cenvat Credit but only distributed to them through ISD Mechanism. Such Distribution, being permissible in Law, Cenvat Credit can not be denied.

62. The assessee stated that Cenvat Credit allowed on business exhibition services. They stated that M/s.International Trade and Exhibitions India Pvt.Ltd, conducted a Business Exhibition Event "World of Metal 2015" from 13-15th September, 2015 and they have

participated in the said Business Exhibition and paid the Participation Fees. This being a Business Exhibition they had also hired Stall No.M3 of 36 Sq Mt area for the purpose of Exhibition of goods manufactured by them.

63. Organisations of Trade Fairs and Exhibitions, socilcit participation from the Trade and Industry and provide Space and other Facilities including Furniture, Cabins, Security, Electricity etc. to display product and Provision of Services. Services provided by an Organiser of Trade Fairs and Exhibitions to an Exhibitor in relation to Business Exhibition is liable to Service Tax under "Business Exhibition Service".

64. They stated that the Business Exhibition Services are specifically covered under the inclusive part of the Definition of Rule 2(l) of Cenvat Credit Rules, 2004. From the definition of Rule 2(l) of Cenvat Credit Rules, it is clear that Business Exhibition Services, are squarely covered under the inclusive part of the Definition of Input Services and therefore, Cenvat Credit of Service Tax is admissible. :Business Exhibition means an Exhibition to market or to promote to advertise or to showcase any Product or Service, intended for the growth in Business of the Producer or Preovidr of such Product or Service and the Services to an Exhibitor, or by the Organiser of a Business Exhibition, in relation to Business Exhibition, is Business Exhibition Service.

65. The assessee relied the case laws of New Swan Enterprise Vs Commissioner of C.Ex, Ludhiana reported in (2017 (47) STR 354 (Tri-Chan) wherein the Cenvat Credit on Business Exhibition Service has been allowed. Therefore, they submitted that the Cenvat Credit of Service Tax on Business Exhibition Services are allowed in their case.

66. The assessee stated that the Cenvat Credit allowed on Coaching & Training Services. They stated that they had attended one day Workshop on Stress Management on 20.09.2016 for which Academy of Human Resources Development has issued them an Invoice against which they had availed Cenvat Credit of Service Tax. These Services are wrongly called as Health and Fitness Services in the impugned Show Cause Notice. They stated that the said service is inclusive part of the definition of Rule 2(l) of Cenvat Credit Rules, 2004.

67. The assessee has stated that the SCN is barred by limitation. The SCN was issued on 31.12.2019 covering the period October 2015, May 2016, July 2016 and October, 2016. They stated that they had disclosed all the aforesaid Cenvat Credit of Service Tax in the Monthly Returns and there was no ingredients such as fraud, misstatement, suppression of facts etc. which warrant invoking longer period of limitation. They referred the case law of Nizam Sugar Factory Vs CCE reported in (2006 (197) ELT 465 (SC) and CBEC Circular No.5/92-CX.4 dated 13.10.1992 wherein it has been clarified that mere non-declaration is not sufficient for invoking longer period of limitation. Therefore, they stated that extended period of limitation is not invokable in the present case.

68. The assessee has stated that penalty is not imposable in the present case. They referred to the case of Continental Foundation Jt.Venture Vs Commissioner of C.Ex. Chandigarh-1 reported in (2007 (216) ELT 177 (SC), Lanxess ABS Ltd Vs Commissioner of C.Ex, Vadodara reported in (2011 (22) STR 587 (Tri-Ahmd), CCE & C, Aurangabad Vs Wochhardt Ltd reported in 2009 (TIOL-1308-CESTAT-Mum), Cosmic Dye Chemical Vs CCE, Bombay reported in 2002-TIOL-236-SC-CX-LB, Padmini Products Vs CCE reported in 1989 (43) ELT 195 (SC), Gopal Zarda Udyog Vs CCE reported in (2005 (188) ELT 251 (SC).

69. The assessee has stated that no interest is chargeable from them in terms of Section 14 of Cenvat Credit Rules, 2004 read with Section 11AA of Central Excise Act, 1944. They also submitted that the SCN is not sustainable and therefore, liable to be dropped and requested for a personal hearing.

PERSONAL HEARING:

70. Personal Hearing in this case was fixed on 22.12.2020, 30.12.2012 and 18.01.2021. The hearing was rescheduled on 21.01.2021. Shri Harshad Raiya, Manager F&A appeared for the personal hearing on 21.01.2021. He stated that this is a case of Service Tax payment under RCM and taking Cenvat Credit on various Services such as Trade and Exhibitions India Ltd and Academy of Human Resources Development etc. for their two units situated at Moraiya and Changodar. He reiterated the submissions made in their reply to the show cause notice submitted on 12.06.2020. He also requested to take a lenient view and drop the case as there is no revenue loss.

DISCUSSION AND FINDINGS:

71. I have carefully gone through the records of the case, written submission made by the assessee in reply to the show cause notices and during the course of personal hearing.

I find that that in the present cases, two separate show cause notices as detailed below have been issued to the assessee demanding Service Tax, interest, demanding reversal/payment of wrongly availed Cenvat Credit, interest and proposing penalties in each show cause notice-

Sr.No.	Show Cause Notice No. & Date	Amount of SCN/Rs.	Issue in brief
01	STC/15-24/OA/2018 dated 31.12.2019	54,65,734.00 1,18,377.00	Non-payment of Service Tax Non-payment of interest on delayed payment of Service tax of Rs.1935825/-
02	V.85/15-23/OA/2018 dated 31.12.2019	52,16,214.00	Wrong availment of Cenvat Credit

NON PAYMENT OF SERVICE TAX"

72. In the case of Show Cause Notice for non-payment of Service Tax and interest for delayed payment of Service Tax mentioned at Sr.No.01 above table, the show cause notice has alleged that during the course of audit of the records of the said assessee for the period from F.Y. 2012-13 to F.Y. 2016-17 by CERA vide LAR No.309/2017-18 dated 02.11.2017 it was observed that:-

73. The said assessee received imported services in two installments from M/s. Fuji Electric Co., Ltd., Chiba, Japan vide Invoice No. CHIBA-141212-1 dated 12.12.2014 amounting of JPY 135000000 (Rs. 7,05,78,000/-) and Invoice No. 53-1603311 dated 01.04.2016 amounting of JPY 40500000 (Rs. 2,38,09,950/-).

(a) They had made the payment of first installment of JPY 1,35,000,000 - Indian Rs.7,05,78,000/ to the foreign Service Provider on 11.2.2015. They had also made the payment of second installment of value of Services amounting of Rs. Rs.2,12,96,214/- out of total invoice value of Rs. 2,38,09,950/- (JPY 4,0500,000) to the foreign service provider on 23.08.2016. The balance amount of Rs.25,13,736 had not paid by them to the foreign service provider though the invoice No. 53-1603311 dated 01.04.2016 was issued by the service provider i.e. M/s. Fuji Electric co., Ltd., Chiba, Japan.

74. From ST-3 Returns of the assessee, CERA officials have observed that an amount of second installment of Rs.2,12,96,214, they paid service tax of Rs.19,35,825 (after adjusting R&D Cess of Rs.10,64,811) on 6.9.2016 and the same also found reflected in the ST-3 Return filed for the period April-September, 2016. However, on amount of first installment of Rs.7,05,78,000, the R&D Cess of Rs.35,28,900 and service tax payment of Rs.50,88,674 (ST Rs.49,40,460+3% education cess) not found reflected in any of the ST-3 Returns filed by them. On being asked by the auditors about the non-payment of Service tax on the first installment, the assessee produced the copy of cheque/challans towards payment of R&D Cess and Service Tax. Scrutiny of the challans produced by the assessee, it revealed that on Rs.7,05,78,000/- the assessee was liable to pay the R&D Cess of Rs.35,28,900 (@ 5%) and the assessee also paid the same through challan dated 11.2.2015. After adjusting the R&D Cess, the assessee was liable to pay the service tax of Rs.50,88,674 and the assessee also produced the Challan No. 00053471903201501769 to the audit team.

75. The audit it was observed from the challan that the service tax of Rs.50,88,674 was actually paid by the other sister concern unit on 19.3.2015 (located in Changodar and having separate STC Code AACCT8243PST001) and not by the said unit who was actually liable to pay the service tax. Thus, the service tax of Rs.50,88,674/- was not paid by the assessee, whereas the assessee was liable to pay the service tax. This resulted in non-payment of service tax of Rs.50,88,674 along with applicable rate of interest.

(b) Non-payment of service tax even though invoice received from Foreign Service provider:- Rule 7 of Point of Taxation Rules, 2011, provides the determination of point of taxation in case of copyrights, etc. This Rule provides that in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and

subsequently the use or the benefit of these services by a person other than the provider give rise to any payment consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof, or an invoice is issued by the provider of service, whichever is earlier.

76. CERA audit further observed that the assessee imported technology from M/s. Fuji Electric Japan and made payment of value of services in two installments. The assessee paid first installment of JPY 1,35,000,000 - Indian Rs.7,05,78,000 on 11.2.2015. The assessee made payment of Rs.2,12,96,214/-out of second installment of JPY 4,0500,000 (Indian Rs.2,38,09,950) as raised by the foreign service provider vide invoice no. 53-1603311 dated 1.4.2016, on 23.8.2016. The balance amount of Rs.25,13,736 of the value of invoice No. 53-1603311 dated 01.04.2016 not paid by the assessee to the foreign service provider though the invoice was issued by the service provider. Thus, service tax liability on Rs. 25,13,736 was not discharged by the assessee though as per Rule cited above, the point of taxation shall be the date of invoice in this case i.e. on invoice dated 1.4.2016, the service tax liability arose on 5.5.2016. However, the assesseee did not pay the service tax of Rs.3,77,060/-.

(c) **Non-payment of interest on belated payment of Service Tax.:-** As per Rule 7 of Point of Taxation Rules, 2011, provides the determination of point of taxation in case of copyrights, etc. This Rule provides that in respect of royalties and payments pertaining to copyrights, trademarks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed, and subsequently the use or the benefit of these services by a person other than the provider give rise to any payment consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof, or an invoice is issued by the provider of service, whichever is earlier.

77. During the audit of records of the assessee, it was observed by CERA officers that the assessee imported technology of JPY 4,0500,000 (Indian Rs.2,38,09,950) vide invoice no. 53-1603311 dated 1.4.2016 and the assessee made payment of value of Rs.2,12,96,214/- to the foreign service provider on 23.8.2016. In the instant case, as per the provisions cited above, the point of taxation shall be date of issue of invoice as issued by the service provider and service tax was required to be paid and by 5.5.2016 respectively. However, audit observed that the assessee had paid the Service Tax of Rs.19,35,825/- on the value of Rs. 2,12,96,214/- on 06.09.2016 and thus there was delay in payment of service tax on the second installment. On this belated payment of service tax, the assessee is liable to pay the interest of Rs.1,18,377/-. .

78. The assessee in reply to the show cause notice has stated that

79. They stated that the payment of Service Tax was made from "Changodar" Unit, instead of "Moraiya" unit of Transformers & Rectifiers (I) Ltd. The said amount of payment of Service Tax made from Changodar Unit was transferred to Moraiya unit through Input Service Distributor procedure as they had ISD Registration in Changodar Unit. The payment of service Tax related to the Services availed by Moraiya Unit only, as per Agreement and the said

payment was also transferred to Moraiya Unit by Changodar Unit, as per rule 7 of Cenvat Credit Rules, 2004. Therefore, there is no irregularity in discharging liability of payment of Service Tax as well as availment of Cenvat Credit by Moraiya Unit.

80. The assessee stated that they had imported services related to Royalty and Licence Fees in two instalments from M/s.Fuji Electric Co. Ltd, Chiba, Japan vide Invoice No.CHIBA-141212-1 dated 12.12.2014 for an amount of JPY 135000000 (Rs.7,05,78,000.00. On this payment of Rs.7,05,78,000.00 (R&D Cess of Rs.35,28,900.00), Service Tax payment of Rs.50,88,674/- (ST Rs.49,40,460/-+3% Education Cess) is payable. On Rs.7,05,78,000.00, they were also liable to pay R&D Cess of Rs.35,28,900.00, @ 5% and they had also paid the same through challan dated 11.12.2015. This Challan was produced before Audit Party. After adjusting R&D Cess, there was a liability to pay Service Tax of Rs.50,88,678.00 for the payment of Value of Rs.7,05,78,000.00 for which they had produced a Service Tax payment challan No.00053471903201501769 dated 19.03.2015, before the Audit party. This payment of Service Tax was made by their another unit located at Changodar and having separate STC No.AACCT8243PST001. They stated that they are also registered as Input Service Distributor and stated that since the liability of payment of Service Tax has already been discharged by their Company, there can not be any demand of Service tax of Rs.50,88,674.00.

81. They stated that normally, in companies who have more than one unit, such important Contracts one unit deals with the Service Providers and make payment to them. It is not in dispute that Service Tax of Rs.50,88,674.00 has not been paid on this Foreign Payment under Reverse Charge. SCN admits that their other unit located in Changodar and having separate STC No.AAACCT8243PST001 made Service Tax payment. Since this payment has been made by Changodar Unit, under their registration, they have also reported this payment in their ST-3 Return. Being an ISD, Changodar Unit, distributed the Cenvat Credit to them for which SCN was issued. The availment of Cenvat Credit is also recorded in Cenvat Credit Registers and therefore, all disclosures are made to the Department. Therefore, they stated that the demand of Service Tax is not sustainable as Service Tax has already been paid.

82. The assessee stated that the allegation is that they were required to make payment to M/s.Fuji Electric, Japan, against import of Technology, in two installments. They had paid the first installments of JPY 1,35,000,000 (Rs.7,05,78,000.00) on 11.2.2015. They further stated that this liability pertains to Invoice No.53-1603311 dated 01.04.2016 of M/s.Fuji Electric, Japan. The value of Invoice was Rs.2,38,09,950.00. Against this, they have made Advance Payment of Rs.2,12,96,214.00 only to Service Provider, on 23.08.2016 and have also made payment of Service Tax of Rs.19,35,825.00 vide Challan No.50785 dated 06.09.2016 and R&D Cess of Rs.10,64,811.00 on 16.08.2016. They had made Advance Payment to M/s.Fuji Electric, Japan, against their Proforma Invoice. This being the Advance Payment, there was no delay in making payment of Service Tax.

83. The assessee stated that the allegation is that the balance amount of Rs.25,13,736.00 of the Value of Invoice No.53-1603311 dated 01.04.2016 is yet to be paid to Foreign Service

Provider. The Service tax liability on Rs.25,13,736.00 worked out to Rs.3,77,060.00 which is yet to be discharged. They submitted that this is a Proforma Invoice and they had made part payment against the said invoice. As per Rule 7 of Point of Taxation Rules, 2011, the Point of Taxation, in respect of the Persons, required to pay Tax, as Recipient of Service, under the Rules made in this regard, in respect of services notified under Sub-Section (2) of Section 68 of the Finance Act, 1994 shall be the date on which payment is made. Provided that, where the payment is not made within a period of three months of the date of invoice, the Point of Taxation shall be determined the date immediately following the said period of three months. These provisions apply only when the Invoice is issued after rendition of Services and not for Advance Payment against Proforma Invoice. Therefore, there is no liability of payment of Service tax of Rs.3,77,060.00 on balance payment of Rs.25,13,736.300.

84. They stated that the allegation is that Point of Taxation shall be the date of Invoice of Service Provider and Service Tax was required to be paid by 05.05.2016 and thus, there was delay in making payment of Service Tax on the second installment. They stated that the payment made to Service Provider, is an Advance Payment and therefore, there is no delay in making payment of Service Tax. The Point of Taxation Rules apply only when Final Invoice is issued by the Service Provider and not for Advance Payments. They stated that Advance Payments are only provisional payments, made to Service Provider and Proforma Invoices issued by Service Providers for receiving these Advance Payments can not be taken into account for computed the time limit as per Point of Taxation Provisions. In view of this they submitted that there is no delay in making payment to Service Provider and consequently, they are not liable to pay interest amounting to Rs.1,18,377/-.

85. Regarding the payment of Service Tax by their "Changodar" Unit, instead of "Moraiya" unit of Transformers & Rectifiers (I) Ltd, I find that both the units have taken separate Service Tax Registration, both are maintaining their records separately, Tax liabilities and are functioning from two different premises under the jurisdiction of two different Service Tax/Central Excise Ranges monitored by the Superintendent of Central Excise/Service Tax. Further I find that Service once availed can not be 'returned' to the service provider or transferred to another persons, while the goods can be returned or transferred. Therefore, the Tax liabilities of one unit can not be transferred to another unit. If their "Changodar" unit paid the amount, they should have claimed refund. I am of the view Tax liability of their Moraiya unit, for which the present show cause notice has been issued, can not be transferred to their Changodar Unit as there is no provision for such transaction in the Finance Act, 1994 and Service Tax Rules made thereunder. Therefore, I hold that the argument of the assessee that they have fulfilled the Tax liabilities is not acceptable. Accordingly, the Service Tax liabilities of Moraiya Unit has to be fulfilled by the Moraiya Unit only and the short paid Service Tax to the tune of Rs.50,88,674/- is to be recovered from the assessee along with interest and penalty in terms of Finance Act, 1994 and rules made thereunder. The assessee's claim that the payment was made as per their agreement can not be justifiable because the agreements are their internal mechanism and nothing to do with Finance Act, 1994 and Service Tax Rules.

86. Regarding short payment of Service Tax to the tune of Rs.3,77,060/- , I find that as per Rule 7 of Point of Taxation Rules, 2011, the determination of point of taxation in case of copyrights, etc, the rules provides that in respect of royalties and payments pertaining to copyrights, trade marks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed and subsequently the use or the benefit of these services by a person other than the provider give raise to any payment consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof; or an invoice is issued by the provider of service, whichever is earlier. I find that in the present case, the point of taxation shall be the date of invoice and on invoice dated 01.04.2016 the service tax liability arose on 05.05.2016. Therefore, I hold that the amount of Service Tax of Rs.3,77,060.36 is to be recovered from the assessee along with interest and penalty.

87. Regarding the issue of non-payment of interest to the tune of Rs.1,18,377/- on belated payment of Service Tax, I find that as discussed in above para, Rule 7 of the Point of Taxation Rules, 2011 clearly provides that the determination of point of taxation in case of copyrights, etc, the rules provides that in respect of royalties and payments pertaining to copyrights, trade marks, designs or patents, where the whole amount of the consideration for the provision of service is not ascertainable at the time when service was performed and subsequently the use or the benefit of these services by a person other than the provider give raise to any payment consideration, the service shall be treated as having been provided each time when a payment in respect of such use or the benefit is received by the provider in respect of thereof; or an invoice is issued by the provider of service, whichever is earlier.

88. I find that the imported technology of JPY 4,05,00,000 (Indian Rs.2,38,09,950/-) vide invoice No.53-1603311 dated 01.04.2016 the assessee made payment of value of Rs.2,12,96,214/- to the foreign service provider on 23.08.2016. As per Rule 7 of Point of Taxation Rules, 2011, the point of taxation shall be the date of issue of invoice as issued by the service provider and service tax was required to be paid by 05.05.2016. It is noticed that the assessee had paid the Service Tax of Rs.19,35,825/- on the value of Rs.2,12,96,214/- on 06.09.2016 and there was delay in payment of second installment. For the said late payment (124 days), the interest worked out comes to Rs.1,18,377/- . The said interest is to be recovered from the assessee as per the Finance Act, 1994 and Rules made thereunder.

89. As per Provision of Section 68 (2) of Finance Act, 1994 read with Rule 6 of Service Tax Rule 1994 as amended, every person providing taxable service to any person liable to pay service tax at the rate prescribed in Section 66 to Central Government by the 5th of the month / quarter immediately following the calendar month / quarter in which the payments are received towards the value of taxable services (except for the month of March which is required to be paid on 31st March).

90. According to Section 70 of the Finance Act, 1994 (as amended from time to time), every person liable to pay the service tax shall himself assess the tax due on the services provided by him and shall furnish to the Superintendent of Central Excise, a return in such form and in such manner and at such frequency as may be prescribed.

91. The said assessee has not disclosed full and correct information about value of the services provided by them in the half yearly ST-3 Returns filed during the period October'2014 to March'2015 and April'2016 to September'2016 and failed to self-assess the correct taxable value for the services provided by him and thereby contravening the Provisions of the Section 70 of the Finance Act, 1994.

92. According to Section 73 of the Finance Act, 1994 (as amended from time to time, where any service tax has not been levied or paid or has been short-levied or short-paid or erroneously refunded by reason of—

(a) fraud; or

(b) collusion; or

(c) wilful mis-statement; or

(d) suppression of facts; or

(e) contravention of any of the provisions of this Chapter or of the rules made thereunder with intent to evade payment of service tax, Central Excise Officer may, within Five year from the relevant date, serve notice on the person chargeable with the service tax which has not been levied or paid or which has been short-levied or short-paid or the person to whom such tax refund has erroneously been made, requiring him to show cause why he should not pay the amount specified in the notice.

93. I find that, there is deliberate withholding of essential information from the department about service provided and value realized by the said assessee in so far the assessee has not informed the Department that their Tax obligation has been fulfilled by their Changodar unit. Also, they never informed the Department about the short payment of Service Tax. This fact came to the knowledge of the Department only after a scrutiny of the documents by the Officials of CERA during the Audit of the records of the assessee. Therefore, its is obvious that all these material information have been concealed by them from the department deliberately, consciously and purposefully to evade payment of service tax. Therefore, in this case all essential ingredients exist to invoke the extended period in terms of Section 73(1) of Finance Act, 1994 to demand the service tax short paid.

94. According to Section 75 of the Finance Act, 1994(as amended from time to time), every person, liable to pay the tax in accordance with the provisions of section 68 or rules made thereunder, who fails to credit the tax or any part thereof to the account of the Central Government within the period prescribed, shall pay simple interest [at such rate not below ten per cent. and not exceeding thirty-six per cent. per annum, as is for the time being fixed by the Central Government, by notification in the Official Gazette] for the period by which such crediting of the tax or any part thereof is delayed.

95. The said assessee has contravened the provisions of Section 67 of the Finance Act, 1994 in as much as, they have failed to determine the correct value of taxable services provided by them; Section 68 of the Finance Act, 1994 read with Rule 6 of the Service Tax Rules, 1994, in as much as, they failed to determine and pay the correct amount of service tax and hence is liable to pay the interest as applicable.

96. The said assessee has contravened the provisions of Section 68(2) of the said Act in as much as they have failed to pay service tax at the rate specified under Section 66 B of the said Act and thereby rendered themselves liable for penalty under section 78 of the said act.

97. All the above acts of contravention on part of the said assessee have been committed willfully with intent to evade payment of service tax rendering them liable for penalty under Section 78 of the Service Tax Act.

98. Also, since the said assessee is failed to comply with the Section 70 of the said act and hence making them liable for penalty under Section 77 of the Finance Act, 1994.

99. The government from the very beginning placed full trust on the service providers, so far as service tax concerned and accordingly measures like self assessment etc., based on mutual trust and confidence are in place. Further, a taxable service provider is required to maintain any statutory or separate records under the provisions of Service Tax Rules as considerable amount of trust is placed on the service provider and private records maintained by him for normal business purposes are accepted, practically for all the purpose of service tax. All these operates on the basis of honesty of the service provider; therefore, the governing statutory provisions create an absolute liability when any provision is contravened as there is a breach of trust placed on the service provider, no matter how innocently. The deliberate efforts by not paying the correct amount of service tax is utter dis-regard to the requirements of law and breach of trust deposed on them, such outright act in defiance of law appears to have rendered them liable for stringent penal action as per the provisions of the Section 78 of the Finance Act, 1994 for suppression on concealment with intent to evade payment of service tax.

100. I find that the show cause notice proposed penalty under Section 76 of the Finance Act, 1994. As regards the issue of imposition of penalty under Section 76 of the Finance Act, 1994, I observe that penalty under Section 76 and 78 of the Finance Act, 1994 are mutually exclusive and once penalty under Section 78 is imposed, no penalty under Section 76 can be imposed in terms of the proviso inserted in Section 78 w.e.f 10.5.2008 in this regard. In the present case, there is a deliberate misstatement and willful suppression, to evade payment of Service Tax, Section 73(1) is invokable and therefore, I do not propose to impose penalty on the assessee under Section 76 of the Finance Act, 1994.

DISCUSSION ON WRONG AVAILMENT OF CENVAT CREDIT.

101. Regarding the issue of wrong availment of Cenvat Credit to the tune of Rs.50,88,674/-, the show cause notices alleged that during the course of CERA audit it was observed in Para-01 and Para-05 of the LAR No. 309/2017-18 dated 02.11.2017, that the said assessee had wrongly availed Cenvat credit Rs. 5088674/-on Service Tax paid vide Challan No.

00053471903201501769 by other unit i.e. M/s. Transformers & Rectifiers (India) Ltd., Survey No. 344-350, Sarkhej-Bavla Highway, Opp. PWD Store, NH No. 08, Village Changodar, Ahmedabad-382213 having Service Tax Registration No.AACCT8243PST003 on import of service under Intellectual Property Rights Service other than Copyright' category and also availed Cenvat Credit of Rs. 1,22,006/- (plus E Cess & SHE Cess total Rs.127540/-)on ineligible input service.

102. On the basis of documents submitted by the said assessee it was noticed that they had availed ineligible Service Tax Credit to the tune of Rs.1,27,540/- on the service provided by International Trade and Exhibitions India Pvt.Ltd, Academy of Human Resources Developments, paid by M/s. Transformer and Rectifier (I) Ltd, Changodar, Dist-Ahmedabad.

103. The assessee stated that they had availed Cenvat Credit of Rs.50,88,674.00 on Service Tax paid vide challan No.00053471903201501769 dated 19.03.2015 by other Unit i.e. M/s.Transformers & Rectifiers (I) Ltd, Survey No.344-350, Sarkhej-Bavla Highway, OPP: PWD Store, NH No.08, Village : Changodar, Ahmedabad having Service Tax Registration No.AACCT8243PST003 on import of Service under Intellectual Property Rights Service other than Copyright category and also availed Cenvat Credit of Rs.1,22,006.00+E Cess and SHE Cess on other Inputs. They stated that they had availed this Cenvat Credit of Rs.50,88,674.00 in the month of October 2015 and the same has been properly reflected in ST-3 Return for the period, October 2015 to March 2016.

104. They stated that the other ineligible services on which they had availed Cenvat Credit of Service tax of Rs.1,22,006.00 (plus E.Cess & SHE Cess) in the month of May, 2016, July, 2016 and October 2016 as averred in SCN are on Invoices dated 30.06.2016, 6.6.2016 and 30.05.2016 of International Trade and Exhibitions India Pvt.Ltd (Rs.1,15,806/- and Invoice dated 20.09.2016 of Academy of Human Resources Development Rs.6200/-.

105. The assessee stated that the payment of Service Tax was made from Changodar Unit, instead of Moraiya Unit of Transformers & Rectifiers (I) Ltd. The said amount of payment of Service Tax, made from Changodar Unit was transferred to Moraiya Unit through Input Service Distributor Procedure as they have ISD registration in Changodar unit. The payment of Service Tax related to the Services availed by Moraiya Unit only as per Agreement and the said payment was also transferred to Moraiya Unit by Changodar Unit as per Rule 7 of Cenvat Credit Rules, 2004. In view of this, there is no irregularity in discharging liability of payment of Service tax as well as availment of Cenvat Credit by Moraiya Unit.

106. The assessee has stated that the Changodar unit is registered as Input Service Distributor and based on the said Registration, they have paid Service Tax and distributed the Cenvat Credit of Rs.50,88,674.00 to them. They submitted that as per Rule 7 of Cenvat Credit Rules, 2004, the Input Service Distributor shall distribute the Cenvat Credit, in respect of the Service tax paid on the input service to their Manufacturing Units or Unit, providing Output Service or an Outsourced Manufacturing Units, as defined in Explanation 4, subject to the conditions specified in the said Rule. They enclosed copy of Central Excise Registration Certificate; Service Tax Registration Certificate and ISD Registration Certificate as collectively obtained by Changodar

Unit. They also availed ineligible Input credit of Service Tax amounting to Rs. 1,27,540/- for the period FY 2016-17 which was not legally available to them & they availed and utilized the same in violation of the stipulation under Rule 2(l) of the CCR, 2004

107. They stated that they had availed the Cenvat Credit and recorded the said availment in their Cenvat Credit Registers and also reflected the said availment in their monthly Returns. Their Changodar Unit has also reported the Service Tax payment, in their ST-3 Returns and Department has no issue on this account. Therefore, they stated that there is no infirmity in the availment of Cenvat Credit of service Tax b y them as the Services are consumed in their Unit. Apart from this, the Intellectual Property Services viz. Royalty and Licence Fees, have nexus without Manufacturing Operations and therefore, the Cenvat Credit of Service Tax is admissible.

108. I find that Rule 9(1) of Cenvat Credit Rules, 2004 stipulated the eligible documents for the purpose of taking Cenvat Credit, which reads as under:-

(1) The CENVAT credit shall be taken by the manufacturer or the provider of output service or input service distributor, as the case may be, on the basis of any of the following documents, namely :-

(a) an invoice issued by-

(i) a manufacturer for clearance of -

(III) inputs or capital goods from his factory or depot or from the premises of the consignment agent of the said manufacturer or from any other premises from where the goods are sold by or on behalf of the said manufacturer;

(IV) inputs or capital goods as such;

(v) an importer;

(vi) an importer from his depot or from the premises of the consignment agent of the said importer if the said depot or the premises, as the case may be, is registered in terms of the provisions of Central Excise Rules, 2002;

(vii) a first stage dealer or a second stage dealer, as the case may be, in terms of the provisions of Central Excise Rules, 2002; or

(i) a supplementary invoice, issued by a manufacturer or importer of inputs or capital goods in terms of the provisions of Central Excise Rules, 2002 from his factory or depot or from the premises of the consignment agent of the said manufacturer or importer or from any other premises from where the goods are sold by, or on behalf of, the said manufacturer or importer, in case additional amount of excise duties or additional duty leviable under section 3 of the Customs Tariff Act, has been paid, except where the additional amount of duty became recoverable from the manufacturer or importer of inputs or capital goods on account of any non-levy or short-levy by reason of fraud, collusion or any wilful misstatement or suppression of facts or contravention of any provisions of the Excise Act, or of the Customs Act, 1962 (52 of 1962) or the rules made there under with intent to evade payment of duty.

(j) Explanation.- For removal of doubts, it is clarified that supplementary invoice shall also include challan or any other similar document evidencing payment of additional amount of additional duty leviable under section 3 of the Customs Tariff Act; or

(k) a bill of entry; or

(l) a certificate issued by an appraiser of customs in respect of goods imported through a Foreign Post Office; or

(m) a challan evidencing payment of service tax by the person liable to pay service tax under sub-clauses (iii), (iv), (v) and (vii) of clause (d) of sub-rule (1) of rule (2) of the Service Tax Rules, 1994; or

(n) an invoice, a bill or challan issued by a provider of input service on or after the 10th day of, September, 2004; or

(o) an invoice, bill or challan issued by an input service distributor under rule 4A of the Service Tax Rules, 1994.

***Provided that** the credit of additional duty of customs levied under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975) shall not be allowed if the invoice or the supplementary invoice, as the case may be, bears an indication to the effect that no credit of the said additional duty shall be admissible;*

109. I find that company has claimed the Cenvat Credit of Rs. 50,88,674/- in the month of October-2015 in ER-1 on the basis of service tax paid by their other unit at Changodar. Further, input service distributor means an office of the manufacturer or producer of final products or provider of output service, which receives invoices issued under Rule 4A of the Service Tax Rules, 1994 towards purchases of input services and issues invoice, bill or, as the case may be, challan for the purpose of distributing the credit of such service tax paid on the said services to such manufacturer or producer or provider (or an outsourced manufacturing unit) as the case may be. In the present case, the assessee has not distributed the credit proportionally and therefore, can not be termed as ISD transaction.

110. In view of the above, I find that the challan no.00053471903201501769 on which credit availed by the assessee on Service Tax paid by the other unit i.e. M/s. Transformers & Rectifiers (I) Ltd., Survey No. 344-350, Sarkhej-Bavla Highway, Opp. PWD Store, NH No. 08, Village Changodar, Ahmedabad-382213 is not admissible to them under Rule 9 of Cenvat Credit Rules, 2004.Thus, the assessee had not discharged its liability for payment of service tax on import of service under Reverse Charge Mechanism and availed Cenvat credit on the basis of wrong service tax challan. Availing of Cenvat credit without payment of service tax was irregular in view of service tax provisions. Therefore, Cenvat Credit of Rs. 50,88,674/- taken on the strength of the said challan is not admissible to them and required to be recovered along with interest and penalty in terms of Finance Act, 1994 and Rules made thereunder.

111. Therefore, it appeared that the assessee have contravened the provisions of Rule 4(7) of the Cenvat Credit Rules, 2004. The assessee has nowhere intimated the department that they are

availing of the credit of such inadmissible services. Rule 9(5) of the Cenvat Credit Rules, 2004 stipulates that the burden of proof regarding the admissibility of the Cenvat Credit shall lie upon the manufacturer or provider of output service taking such credit. In the instant case it is observed that the assessee have failed to discharge such obligation cast upon them and as such it appears that the assessee have indulged in the above said contravention with intent to evade payment of duty.

112. Further, with effect from 01.04.2011, the term "Input Service" has been re-defined under Rule 2 (l) of the said Credit Rule and the same is reproduced as under:

(l) "Input service" means any service, -

(i) Used by a provider of taxable service for providing an output service, or

(ii) Used by the manufacturer, whether directly or indirectly, in or in relation to the manufacture of final products and clearance of final products up to the place of removal, and includes services used in relation to modernization, renovation or repairs of a factory, premises of provider of output service or an office relating to such factory or premises, advertisement or sales promotion, market research, storage upto the place of removal, procurement of inputs, accounting, auditing, financing, recruitment and quality control, coaching and training, computer networking, credit rating, share registry, and security, business exhibition, legal services, inward transportation of inputs or capital goods and outward transportation upto the place of removal; but excludes services,-

(D) Service portion in the execution of a works contract and construction services including services listed in clause (b) of Section 66E of the finance Act (hereinafter referred as specified services) insofar as they are used for –

(c) Construction or execution of works contract of a building or a civil structure or a part thereof; or

(d) Laying of foundation or making of structures for support of capital goods except for the provision of one or more of the specified services; or

(E) Services provided by way of renting of a motor vehicle, insofar as they relate to a motor vehicle, which is not a capital goods; or

(BA) Services to general insurance business, servicing, repair and maintenance, insofar as they relate to a motor vehicle which is not a capital goods except when used by –

(c) A manufacturer of a motor vehicle in respect of a motor vehicle manufactured by such person; or

(d) An insurance company in respect of a motor vehicle insured or reinsured by such person; or

(F) Such as those provided in relation to outdoor catering, *beauty treatment, health services, cosmetic and plastic surgery, membership of a club,* **health and fitness centre**, *life insurance,*

*health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, **when such services are used primarily for personal use or consumption of any employee;***

113. M/s. Transformers & Rectifiers (I) Ltd., is not eligible to avail Cenvat Credit on Exhibition Services and Health & Fitness Service because such services were not used directly or indirectly in or in relation to manufacture of final products. These services do not qualify as eligible input services as statutorily defined under Rule 2(l) of the CCR, 2004 for the purpose of availing CENVAT credit by virtue of Rule 3 of the CCR, 2004. Such ineligible CENVAT credit availed & utilized by M/s. Transformers & Rectifiers (India) Ltd, is therefore required to be recovered along with interest from them under Rule 14 of the CCR, 2004 read with the provisions of Section 11A and Section 11 AA of the Central Excise Act, 1944.

114. The Input credit of Service Tax amounting to Rs. 1,27,540/- for the period FY 2016-17 has availed by M/s. Transformers & Rectifiers (I) Ltd. was not legally available to them & the same they availed and utilized is in violation of the stipulation under Rule 2(l) of the CCR, 2004 where input service is defined as service availed up to the place of removal and in complete disregard to the definition of 'place of removal' for manufactured goods provided under Section 4(3)(c)(i) of the Central Excise Act, 1944. By way of such transgression with intention to utilize undue benefit of CENVAT credit by M/s. Transformers & Rectifiers (I) Ltd has contravened the provisions of Rule 3 of the CCR, 2004 rendering them liable to penalty under Rule 15(2) of the CCR, 2004.

115. M/s. Transformers & Rectifiers (I) Ltd. is a well-known established business firm and are fully aware about the provisions of Central Excise Act,1944 and the provisions of Finance Act, 1994 and rules made there-under, and they are strictly bound to follow the mandatory and regulatory requirements prescribed under the said rules. It is well established law that the burden for admissibility of credit shall always lie upon the person taking such credit. M/s. Transformers & Rectifiers (I) Ltd. has resorted such modus operandi with intent to avoid the payment of tax. Thus, it is clear that M/s. Transformers & Rectifiers (I) Ltd Moraiya, has purposefully contravened the provisions of CCR, 2004 as elaborately discussed hereinabove and rendered them liable for penalty under the provisions of Finance Act, 2004.

116. M/s. Transformers & Rectifiers (I) Ltd., is not eligible to avail Cenvat Credit on Exhibition Services and Health & Fitness Service because such services were not used directly or indirectly in or in relation to manufacture of final products. These services do not qualify as eligible input services as statutorily defined under Rule 2(l) of the CCR, 2004 for the purpose of availing CENVAT credit by virtue of Rule 3 of the CCR, 2004. Such ineligible CENVAT credit availed& utilized by M/s. Transformers & Rectifiers (I) Ltd. is therefore required to be recovered along with interest from them under Rule 14 of the CCR, 2004 read with the provisions of Section 11A and Section 11 AA of the Central Excise Act, 1944.

117. The Input credit of Service Tax amounting to Rs. 1,27,540/- for the period FY 2016-17

has availed by M/s. Transformers & Rectifiers (I) Ltd. was not legally available to them & this same they availed and utilized is in violation of the stipulation under Rule 2(l) of the CCR, 2004 where input service is defined as service availed up to the place of removal and in complete disregard to the definition of 'place of removal' for manufactured goods provided under Section 4(3)(c)(i) of the Central Excise Act, 1944. By way of such transgression with intention to utilized undue benefit of CENVAT credit M/s. Transformers & Rectifiers (I) Ltd, Moraiya has contravened the provisions of Rule 3 of the CCR, 2004 rendering them liable to penalty under Rule 15(2) of the CCR, 2004.

118. M/s. Transformers & Rectifiers (I) Ltd, Moraiya has resorted such modus operandi with intent to avoid the payment of tax. Thus, it is clear that M/s. Transformers & Rectifiers (India) Ltd. has purposefully contravened the provisions of CCR, 2004 as elaborately discussed hereinabove and rendered them liable for penalty under 15 of the CCR, 2004 read with Section 11AC of the Central Excise Act, 1944.

119. Under the self-assessment procedure there is no requirement to submit the documents such as sales invoice or purchase invoice with ER-1/ER-3 filed by the registered manufacturer or service provider who shall have to report only the arithmetical data of payment of duty, CENVAT Credit of duty availed/utilized and quantity of excisable goods manufactured and cleared during the month in ER-1/ER-3. Further, it is a fact that from any point of time M/s. Transformers & Rectifiers (India) Ltd. has nowhere intimated or sought for any clarification or it was brought to notice to the department about admissibility of credit of input Service Tax in respect of credit taken by the assessee. Thus, the material facts of admissibility and availing such credit are deliberately suppressed by them with intent to avail and utilize the inadmissible credit. Had the CERA not conducted audit the facts of availing such credit would have been remained un-noticed. In the event of their deliberate failure to bring the notice to the department it is clear case of suppression of facts with malafide intention and thus the extended period is invokable in this case to disallow and recover such inadmissible credit which has been availed and utilized by them towards the payment of duty of excise on their final products.

120. This act of commission clearly establishes their fraudulent mindset and the act of wrong availment/utilization of credit resulted into gross infringement of Central Excise Rules, 2002 and Central Excise Act,1944 which rendered them liable for penal action. In the case of Commissioner of Customs V/s. Candid Enterprises [2001 (130) E.L.T. 404 (S.C.)], the Apex Court observed that Section 17 of the Limitation Act,1963 has embodied cardinal principle that fraud nullifies everything. In this case the ratio of Commissioner of Customs V/s. Candid Enterprises [2001 (130) E.L.T. 404 (S.C.)] and Commissioner V/s. Aafloat Textiles Pvt Ltd [2009 (235) ELT 587 (S.C.)] is applicable.

121. In view of the above discussion, I find that both the show cause notices are sustainable under the law as the assessee has violated the Finance Act, 1994 and Rules made thereunder and the Central Excise Act, 1944, Central Excise Rules, 2002, discussed hereinabove with an intent to evade Service Tax/Central Excise duty. They have relied various case laws in their defence

regarding non-payment of Service Tax, wrong availment of Cenvat Credit, interest penalty and also against invoking extended period of limitation. I find that all these case laws are distinguishable looking into the facts of the present case. Therefore, the said case laws are not admissible in the present case.

122. In view of my discussion and my findings above, I pass the following orders:-

ORDER

For non-payment of Service Tax, interest

(I) I confirm the Service Tax of Rs.54,65,734/- (Rupees Fifty Four Lakhs Sixty Five Thousand Seven Hundred and Thirty Four only) covering the period from 2014-2015 and 2016-17 and order to recover from the assessee under Section 73 (1) of the Finance Act, 1994 read with Section 68(2) of the Finance Act, 1994 and the Notification No.30/2012-ST dated 20.06.2012 by invoking extended period of five years;

(ii) I order M/s. M/s. Transformer & Rectifiers India Ltd, Moraiya, Dist-Ahmedabad to pay interest on the amount of Service Tax confirmed above under Section 75 of the Finance Act, 1994;

(iii) I order M/s.Transformer & Rectifier India Ltd, Moraiya, Dist-Ahmedabad to pay interest of Rs. 1,18,377/- on delayed payment of Service Tax amounting of Rs. 19,35,825/- under Section 75 of the Finance Act, 1994.

(iv) I do not impose any penalty on the assessee under Section 76 of the Finance Act 1994.

(v) I impose a penalty of Rs.10,000/- (Rupees ten thousand only) on M/s. Transformer & Rectifier India Ltd, Moraiya, Dist-Ahmedabad, under Section 77 of the Finance Act, 1994, as amended, for contravention of the provisions of section 70 of the Finance Act, 1994.

(vi) I impose a penalty Rs.54,65,734/- (Rupees Fifty Four Lakhs Sixty Five Thousand Seven Hundred and Thirty Four only) on M/s.Transformer & Rectifier India Ltd, Moraiya, Dist-Ahmedabad under Section 78 of the Finance Act, 1994.

(viii) I further Order that in the event the entire amount demanded as above is paid within thirty days from the receipt of this Order along with applicable interest, the amount of penalty liable to be paid by them shall be 25% (twenty five per cent) of the penalty imposed at Sr. No.(vi) above, subject to the condition that such reduced penalty is also paid within the said period of 30 days (thirty days) in terms of clause (ii) of Section 78(1) of the Finance Act, 1994.

For wrong availment of Service TAx

I disallow Cenvat Credit of Service Tax amounting to Rs.50,88,674 /- [CENVAT+ Ed Cess, Rs.+ & SHE Cess] (Rupees fifty lakhs eighty eight thousand six hundred and seventy four only) availed wrongly by M/s.Transformer & Refictier India Ltd, Moraiya and order them to pay/reverse the said wrongly availed Cenvat Credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944;

(ii) I disallow the Cenvat credit of Service Tax amounting to Rs. 1,27,540/- [CENVAT+ Ed.Cess. Rs.+ & SHE Cess] (Rupees one lakh twenty seven thousand five hundred and forty only) availed wrongly by M/s.Transformer & Rectifier India Ltd, Moraiya on ineligible input services and order them to pay/reverse the said ineligible input service Credit under Rule 14 of the Cenvat Credit Rules, 2004 read with Section 11A of the Central Excise Act, 1944;

(iii) I order M/s.Transformer & Rectifier India Ltd to pay interest at the appropriate rates on the amount of CENVAT credit confirmed/disallowed at (i) and (ii) above under Section 14 of the Cenvat Credit Rules, 2004 read with section 11AA of the Central Excise Act, 1944 and;

(iv) I impose a penalty of Rs.52,16,214/- (Rupees fifty two lakhs sixteen thousand two hundred and fourteen only) on M/s.Transformer & Rectifier India Ltd, under Rule 15(2) of the Cenvt Credit Rules, 2004 read with Section 11AC of the Central Excise Act, 1944.

(v) I further order that in terms of Section 11AC (1) (e) of the Central Excise Act, 1944, if M/s.Transformer & Rectifier India Ltd, Moraiya, Dist-. Ahmedabad, pays the Central Excise duty/reverse the wrongly availed Cenvat Creedit determined at Sl. No. (i), (ii) above and interest payable thereon at (iii) above within thirty days of the date of communication of this order, the amount of penalty liable to be paid by M/s. M/s.Transformer & Rectifier India Ltd, Moraiya, Dist-. Ahmedabad shall be twenty-five per cent of the penalty imposed, subject to the condition that such reduced penalty is also paid within the period so specified.

123. The show cause notices bearing Nos, STC/15-24/OA/2018 dated 31.12.2019 and V.85/15-23/OA/2018 dated 31.12.2019 are disposed-of in the above manner.

(M. L. Meena)
Additional Commissioner,
CGST &Central Excise,
Ahmedabad North.

F.No.V.85/15-23/OA/2018
F.No. STC/15-24/OA/2018

Dated:10.03.2021

BY Regd. Post A.D./ HAND DELIVERY

To,

M/s. Transformer & Rectifiers India Ltd.,
Survey No. 431/P & 427/1/P,
Sarkhej-Bavla Highway,
Vill. Moraiya, Ta-Sanand,
Dist. - Ahmedabad-382213

Copy to:

1. The Commissioner, CGST & Central Excise, Ahmedabad North
2. The Deputy Commissioner, CGST, Division-IV, Ahmedabad North
3. The Superintendent, CGST, AR-III, Division-IV, Ahmedabad North;
4. Guard File.